

1 HONORABLE RICHARD A. JONES
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 BANK OF AMERICA NA,

11 Plaintiff,

12 v.

13 ANTHONY G. MWAURA, et al.

14 Defendants.

15 CASE NO. C13-1726 RAJ

16 ORDER

17 This matter comes before the court on plaintiff Bank of America's motion to
18 remand. Dkt. # 9. Plaintiff argues that this court should remand this case because (1)
19 removal is not proper pursuant to 28 U.S.C. § 1441, and (2) the court does not have
20 federal question jurisdiction. *Id.* at 3. With respect to the latter, *pro se* defendants do not
21 contend that this court has federal question jurisdiction. Rather, they contend that this
22 court has jurisdiction based on diversity of citizenship pursuant to 28 U.S.C. § 1332(a)
23 because they are citizens of Washington, plaintiff is a citizen of Delaware, and the
24 amount in controversy exceeds \$75,000. Dkt. # 1 (Removal Not.) ¶¶ I.2, II.7. Plaintiff
25 does not challenge jurisdiction based on 28 U.S.C. § 1332(a). Rather, it argues that an
26 "action removable solely on the basis of diversity of citizenship may not be removed if
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1 any of the parties in interest served as defendants is a citizen of the state in which the
 2 action was brought. 28 U.S.C. § 1441(b)(2)." Dkt. # 9 at 3. Thus, plaintiff relies on the
 3 forum defendant rule as the only basis to remand.

4 Section 1441(b)(2) provides that a "civil action otherwise removable solely on the
 5 basis of the jurisdiction under section 1332(a) of this title may not be removed if any of
 6 the parties in interest properly joined and served as defendants is a citizen of the State in
 7 which such action is brought." 28 U.S.C. § 1441(b)(2). Thus, "[s]eparate and apart from
 8 the statute conferring diversity jurisdiction, 28 U.S.C. § 1332, § 1441(b) confines
 9 removal on the basis of diversity jurisdiction to instances where no defendant is a citizen
 10 of the forum state." *Lively v. Wild Oats Markets, Inc.*, 456 F.3d 933, 939 (9th Cir. 2006).
 11 "[T]his additional limitation on diversity-based removal jurisdiction is a procedural, or
 12 non-jurisdictional, rule." *Id.* As such, motions to remand "on the basis of any defect
 13 other than lack of subject matter jurisdiction[,] such as the forum defendant rule, "must
 14 be made within 30 days after the filing of the notice of removal under section 1446(a)." 28 U.S.C. § 1447(c); *see Lively*, 456 F.3d at 940 ("The purpose of the forum defendant
 16 rule also supports treating it as a non-jurisdictional requirement. Removal based on
 17 diversity jurisdiction is intended to protect out-of-state defendants from possible
 18 prejudices in state court. . . . A procedural characterization of this rule honors this
 19 purpose because the plaintiff can either move to remand the case to state court within the
 20 30-day limit, or allow the case to remain in federal court by doing nothing.").

21 *Pro se* defendants filed the notice of removal on September 23, 2013. Dkt. # 1.
 22 Plaintiff filed its motion to remand on March 10, 2014, more than 30 days after the notice
 23 of removal was filed. Accordingly, plaintiff waived its right to remand under the forum
 24 defendant rule. *See Lively*, 456 F.3d at 942 ("We hold that the forum defendant rule
 25 embodied in § 1441(b) is a procedural requirement, and thus a violation of this rule
 26 constitutes a waivable non-jurisdictional defect subject to the 30-day time limit imposed
 27 by § 1447(c).").

1 For all the foregoing reasons, the court DENIES plaintiff's motion to remand.
2 Dated this 8th day of April, 2014.

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5 The Honorable Richard A. Jones
6 United States District Judge
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